Speech

Measuring the Impact of the SEC's Enforcement Program

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Introduction

Good morning, and thank you Steve for that kind introduction and for those very moving words about Scott [Friestad].

We at the SEC lost a beloved leader and friend earlier this year when we lost Scott. As many of you here know – Scott was widely respected by everyone he dealt with – regardless of which side of the table they sat on. He was a dedicated public servant and he always led by example – with character, integrity, warmth and humility. And this made him a cherished mentor to generations of SEC enforcement attorneys. He was a great friend, and we all really miss him. I thank you so much for honoring him here today.

With that, let me give the required disclaimer that the views I express here today are my own and do not necessarily represent the views of the Commission or its staff.[1]

It is a pleasure to speak to you today, and it is great to see so many alumni of the Commission and the Department of Justice in attendance.

My speech today happens to fall a little less than two weeks before the close of Steve Peikin's and my first full fiscal year as Co-Directors of the SEC's Division of Enforcement. In many respects, a year is an arbitrary time period to measure the Division's effectiveness and impact. However, as our first full fiscal year as Co-Directors draws to a close, it is a natural time to look back and assess how successful we have been in accomplishing our mission of protecting investors.

But what does it mean for a civil law enforcement program like ours to be "successful"? Is it simply a numbers exercise? Or something more? We have spent a lot of time thinking about this, particularly at a time when resources are limited and we face many challenges. This exercise takes on even more meaning at this time of year; in the coming weeks, as has happened in past years, I expect to see many commenters analyze the SEC's enforcement performance over the past fiscal year and draw conclusions about the effectiveness of SEC enforcement based on their slicing and dicing of the various numbers.

Let me be emphatic about this. Steve and I fundamentally reject the premise these analyses embrace – that numbers – standing alone – can adequately measure the success or impact of an enforcement program. Statistics

such as the number of actions the SEC brought in a fiscal year and the dollar amount of judgments and orders obtained in that year are interesting so far as they go, but they only tell us so much. Put simply, statistics do not provide a full and meaningful picture of the quality, nature, and effectiveness of the Division's efforts.

So, if numbers do not tell the story, what does? Asked another way, how should one measure the SEC's success as the primary civil enforcer of the federal securities laws? Since being appointed Co-Directors, we have asked ourselves that question many times, and we have maintained that the best way to assess the SEC Enforcement Division's effectiveness is by looking at the nature and quality of the SEC's actions. Are we bringing meaningful cases that send clear and important messages to market participants and investors? Are we making an impact?;

We believe we are and, when this fiscal year is over, we think it will be clear all that the SEC's enforcement program has accomplished. This has been a strong year for the Division of Enforcement. But you do not need to take my word for it. The nature and quality of the SEC's enforcement actions during the last year speak for themselves – they addressed a wide array of conduct and spanned a broad landscape. We renewed our focus on Main Street investors and, at the same time, continued to pursue and bring cases against large corporations, financial institutions, "Wall Street" firms, investment advisers, Ponzi schemers, offering fraudsters, insider traders, and other market participants who violate the federal securities laws. We have also continued to focus on individual accountability by pursuing charges against individuals for misconduct in the securities markets, including registered individuals, executives at all levels of the corporate hierarchy, including CEOs, CFOs and other high-ranking executives, and gatekeepers.[2] A few significant examples include the SEC's charges against:

- A Boulder, Colorado-based biopharmaceutical company, its CEO and its former CFO, who will pay more than $20 million in penalties, for misleading investors about the company's developmental lung cancer drug; [3]

- Four Transamerica entities that were ordered to refund $97 million to retail clients for misconduct involving faulty investment models;[4]

- Congressman Christopher Collins, the U.S. Representative for New York's 27th Congressional District, and others for allegedly engaging in insider trading;[5]

- Merrill Lynch, Pierce, Fenner & Smith, which agreed to admit wrongdoing and pay a $42 million penalty, for misleading customers about how it handled their orders;[6]

- Altaba, the entity formerly known as Yahoo! Inc., which agreed to pay a $35 million penalty to settle charges that it misled investors by failing to disclose one of the world's largest data breaches in which hackers stole personal data relating to hundreds of millions of user accounts;[7]

- Theranos Inc., a private company, and its founder and CEO Elizabeth Holmes, and its former President Ramesh "Sunny" Balwani for raising more than $700 million from investors through an elaborate, years-long fraud in which they exaggerated or made false statements about the company's technology, business, and financial performance;[8]

- A group of unregistered funds and their owner who allegedly bilked thousands of retail investors, many of them seniors, in a $1.2 billion Ponzi scheme;[9] and

- Mining company Rio Tinto and two former top executives for allegedly inflating the value of coal assets acquired for $3.7 billion and sold a few years later for $50 million.[10]

While these – and other – case-related achievements tell more than numbers, they too paint only a limited picture of the Enforcement Division's activities and accomplishments. For one, they don't capture the breadth of the

investor protection mandate the Division operates under. To put it bluntly, policing the U.S. securities markets and enforcing the federal securities laws is a huge job. The SEC oversees approximately $82 trillion in securities trading annually on U.S. equity markets, the disclosures of approximately 4,300 exchange-listed public companies with an approximate aggregate market capitalization of $30 trillion, and the activities of over 26,000 registered entities and self-regulatory organizations.[11] In fiscal year 2017, the SEC received more than 16,500 tips, complaints and referrals to triage and analyze – a number I expect to be substantially higher this year – in addition to managing thousands of ongoing investigations and litigations. To handle all of this, the Enforcement Division relies on approximately 1,400 employees and contractors nationwide. At the same time, the Division has seen meaningful attrition of experienced attorneys and other staff over the past years, coupled with a hiring freeze that dates back to 2016. This wide gulf between our resources and our responsibilities translates into a need to think very carefully about how we allocate resources to carry out our investor protection mandate.

To help us with this assessment, last year Steve and I articulated five principles that would guide our decision-making. They are: (1) focus on the Main Street investor; (2) focus on individual accountability; (3) keep pace with technological change; (4) impose sanctions that most effectively further enforcement goals; and (5) constantly assess the allocation of our resources.[12]

Almost a year has passed since we articulated these principles and, over the course of that time, the Division's experience provides us with many examples of how they look in practice. I am going to spend the balance of the time I have with you today to highlight two examples – we think these are truly success stories and emblematic of what Steve and set out to achieve as Co-Directors.

First, I'm going to talk about the Division's approach to dealing with initial coin offerings (ICO) and digital assets, and second, I will address the Division's Share Class Selection Disclosure Initiative. These two examples illustrate our approach of identifying challenges and risks facing investors and markets, and developing a response that addresses those challenges in a thoughtful and effective way, and that maximizes our use of resources.

ICOs and Digital Assets

Let me start with our approach to addressing misconduct in the ICO and digital asset space. As many of you know, in just a few years, cryptocurrency and ICO markets have grown into a phenomenon. As of the second quarter of 2018, ICOs have reportedly raised over $16.7 billion, which compares to roughly $4 billion raised by ICOs in all of 2017, and less than $100 million in 2016.[13] The novelty of ICOs, coupled with excitement about the potential utility of the underlying blockchain, or distributed ledger, technology, makes these offerings particularly enticing for some investors. But the exuberance around the ICO market can obscure the fact that these offerings are often high-risk investments. For instance:

- The issuers may lack established track records.
- They may not have viable products, business models, or the capacity for safeguarding digital assets from theft by hackers.
- And some of the offerings are simply outright frauds.

We in the Enforcement Division recognize the need to protect investors from these risks while balancing the potential this technology could have for capital formation. We do not want to stifle the legitimate use of technology and innovation to facilitate capital formation, but anyone who seeks to do so must do it in compliance with the federal securities laws.

The Enforcement Division's work in this area reflects a balancing of these interests. And, it is reflective of several of the principles Steve and I articulated in the annual report – the focus on Main Street investors, keeping pace with technological change, and assessing our resource allocation. We have tried to strike the balance by being proactive and working collaboratively with experts both within the agency and outside of it. Here is how we have accomplished this.

Last fiscal year, the SEC issued a Report of Investigation addressing the application of the federal securities laws to the offer and sale of virtual tokens created and distributed on a blockchain by an entity called "The DAO" (the "DAO Report").[14] In the DAO Report, the SEC applied longstanding securities law principles to conclude that this virtual token constituted an investment contract and therefore was a security, and to reiterate the fundamental principle that the federal securities laws apply – including those relating to offers, sales, and trading – regardless of whether the security is certificated or issued on a blockchain.[15]

Then, at the close of last fiscal year, the Commission announced the formation of the Cyber Unit and folded the Enforcement Division's already-existing digital asset expertise into the Unit.[16] The Commission did this because the emerging issues presented in this area warranted a consistent, thoughtful approach.

Following creation of the Cyber Unit and issuance of the DAO Report, the Commission has taken several important actions.

- Where the technology is merely a veneer for an alleged fraud, the Commission has taken enforcement action.[17] For example, the Commission charged the three co-founders of Centra Tech, a purported financial services start-up, with orchestrating a fraudulent ICO that raised more than $32 million from thousands of investors.[18] The Commission also obtained court orders freezing the assets of Titanium Blockchain Infrastructure Services Inc. and AriseBank and, importantly, orders appointing receivers to identify and take control over the defendants' digital assets.[19] These efforts are great examples of our work to preserve assets and protect investors.

- Another tool we have used frequently is a Commission order to suspend trading when there is a question about the information available to investors about a security. This has been particularly important when companies with publicly traded securities have suddenly claimed to shift to blockchain-related businesses or when there is confusion about products that are being quoted. This fiscal year, we suspended trading in the stock of nine different issuers because of these questions.[20]

- The Enforcement Division has also used other methods to provide information to investors, including by making public statements. We have issued, together with other Divisions, three public statements regarding conduct in the ICO space that concerned us. For example, last November the Division, along with the SEC's Office of Compliance Inspections and Examinations ("OCIE"), addressed the potentially unlawful promotion of ICOs by celebrities and others.[21] Almost immediately afterward, the anecdotal evidence we saw suggested a dramatic decline in the number of celebrity endorsements of ICOs.

There are two other important points I want to convey.

- First, we have tried to be thoughtful about how to handle ICO registration cases that do not involve fraud. We want to recognize legitimate efforts to use new methods to raise capital, but we also want to make sure investors receive the information, and protection, they are entitled to under our laws. The Commission's settled order against a business called Munchee was an important step.[22] In that case, the Commission brought a non-fraud enforcement action against an issuer that, after the Commission's DAO Report, conducted an unregistered securities offering through an ICO. The Commission did not order Munchee to pay a penalty in that case because it cooperated quickly and refunded its proceeds back to investors.[23] Aside from Munchee, the Commission has brought other non-fraud cases against individuals who have taken advantage of public interest in blockchain technology with illegal stock sales that violate Section 5.[24] Section 5 cases stress the importance of full and fair disclosure to investors when securities are offered and sold to them. And, to the extent that the Enforcement Division has other pending investigations in this area, we will likely recommend more substantial remedies against issuers that fail to comply with the registration requirements.

- Second, we are also looking beyond the issuers of ICOs. Very recently, the Commission announced a settled order against two individuals who ran a self-described "ICO Superstore" that operated as an

unregistered broker-dealer and participated in unregistered offerings.[25] On the same day, the Commission filed a settled action against a hedge fund manager that violated an investment company registration provision based on its investments in digital assets.[26]

That is a broad outline of how the Enforcement Division has approached ICO and digital asset matters – with a focus on bringing cases that deliver broad messages and have an impact beyond the individual cases. These considerations are not limited to determining which cases to ultimately bring, but also play a role in determining which matters to open and investigate. We are very focused on considering – at the outset – whether and why pursuing a particular matter is a good use of our resources.

Given the potential of ICOs to fundamentally alter the process by which issuers raise money, they have a significance to our markets that far outweighs strict notional dollar amounts. So, matters related to ICOs and crypto-assets must be a focus for the Division of Enforcement. And so far, our focus and work is paying dividends. Our commitment to meeting these emerging cyber-related issues head on stands to greatly benefit investors both today and in the future. Through our ongoing efforts, I am confident that the Commission will continue to play a leading role in bringing this new and emerging market within the umbrella of investor protection that the federal securities laws require.

The Share Class Selection Disclosure Initiative

I'm now going to shift to a more traditional area of risk, but an area where investors, particularly retail or Main Street investors, face a risk of harm. A big part of the Enforcement Division's focus on retail investors has manifested itself in the Commission's enforcement actions. A substantial portion of the Commission's recent cases have involved wrongdoing directed at retail investors, and we have hundreds of ongoing retail-investor-oriented investigations. In the past year, the Enforcement Division has focused its enforcement efforts particularly on misconduct that occurs at the intersection of investment professionals and retail investors.[27] And, while the SEC has brought some notable cases in this area over the past fiscal year, we in the Enforcement Division have also been thinking strategically about other ways to identify and pursue this sort of misconduct.

One area where the Enforcement Division is employing a different approach concerns disclosure failures relating to 12b-1[28] fees paid by advisory clients. These fees – commonly known as marketing and distribution fees – are a typical component of operating expenses for certain share classes offered throughout the mutual fund industry.

The Enforcement Division's focus on this issue does not relate to the merits of those fees. Rather, we are focusing on whether the adviser is accurately disclosing its practices regarding selecting a more expensive mutual fund share class when a lower-cost share class for the same fund is available, especially when the adviser benefits from the more-expensive share class and therefore has a financial conflict of interest. We all know that fees and expenses are a drag on returns. Therefore, when two share classes of the same mutual fund, which represent the same investments, are equivalent but for the fact that one charges marketing and distribution fees while the other does not, it is most likely better for the client to invest in the lower-cost share class. If an adviser decides to invest a client in a higher-cost share class when a lower-cost share class of the same fund is available to the client, the adviser must make full and fair disclosure regarding that decision so that the client can make an informed decision about its relationship with the adviser. This includes clearly disclosing the adviser's conflicts of interest. It is when such disclosures are incomplete or missing where problems can arise, and investors, particularly retail investors, can be harmed.

Our focus on disclosure around such fees is not new. Based on the Enforcement Division's investigative work, since 2013, the Commission has brought more than 15 cases involving disclosure issues surrounding advisers' decisions to invest their clients in higher-cost share classes when a lower-cost share class for the exact same fund was available.[29] In each of these cases, disgorgement was ordered and distributed to investors who had paid such fees. Similarly, OCIE has been active in this space – marketing and distribution fees have been a perennial priority for the examination program, and in 2016 the office issued a risk alert highlighting the risks surrounding marketing and distribution fees.[30] Yet, we have continued to see disclosure failures. One need look no further

than the cases the Commission has brought in the past fiscal year to see that, despite past enforcement actions and warnings from OCIE, these problems persist.[31]

These cases have taken us, on average, 22 ½ months to complete. And just before we rolled out the initiative, the Division had close to a dozen ongoing investigations relating to these practices. Despite the time and resources our staff had dedicated to this issue, the problem was not going away. So, that left us with a question: How could we tackle this problem better and more efficiently?

Folks in the Enforcement Division came up with the idea of a self-reporting initiative with two goals in mind: (1) ensuring that these conflicts are adequately disclosed to investors and (2) getting money back in the pockets of as many investors as possible as quickly and efficiently as possible. The Share Class Disclosure Initiative is a voluntary program for investment advisers to self-report to the Commission their failures to disclose their financial conflicts of interest relating to compensation they received in the form of 12b-1 fees. [32] The deadline for self-reporting pursuant to the Initiative was June 12. For those who self-reported, and where the facts and circumstances warrant it, the Enforcement Division is going to recommend that the Commission institute settled antifraud actions that require payment of disgorgement that will be distributed to investors. In an effort to maximize the number of advisers that would self-report and make payments to investors, the Enforcement Division stated that, as part of the Initiative, it would recommend that the Commission not impose a penalty in these cases. In this circumstance, given the difficulty of detecting these sorts of violations, we believe this was a worthwhile tradeoff. I think we got this right. We've received a substantial number of self-reports and we believe the Initiative will ultimately be a success story for many investors – we expect to return money back to investors on a much broader scale, much more quickly, than we could have done if we had continued to pursue these investigations in the traditional way.

This Initiative, like the Enforcement Division's work in the ICO space, is reflective of several of the five principles – it exemplifies our focus on Main Street investors, imposing remedies that further the Commission's enforcement goals, and assessing how we allocate resources. This is an efficient and effective way to remedy a harm on investors – it enables us to identify violations much faster than would be done through the ordinary investigative process. And, because the advisers that settle under the Initiative will make payments directly to investors as part of the settlements, the Initiative furthers our goal of getting money back in the hands of harmed Main Street investors as quickly as possible.

Challenges

In everything the Division does, we are working with an eye toward the two objectives I've described this morning: Protecting investors by timely targeting areas that are susceptible to abuse and, wherever possible, making investors whole; and sending a clear message to investors and to the market more generally, in a way that reduces the opportunity for abuse in the future. If we can do those things, then I think we can fairly say that we are serving investors well.

But we have also faced many challenges – the Supreme Court decisions in *Lucia* and *Kokesh*, for example.[33] Adapting in response to those decisions has required the entire Division, but particularly those in the Trial Unit, to divert considerable attention to older matters – many of which had been substantially resolved. While we fully respect the Court's decisions, we will feel the impact for a long time. As we have noted previously, the Commission has already had to forgo hundreds of millions of dollars in disgorgement – much of which could have been returned to harmed investors – and that number will continue to go up over time.

We also experienced numerous internal challenges – both in terms of transition and personnel changes, as well as structural changes. In the past year, we experienced a number of significant vacancies and turnover in our senior leadership, including in some of our larger regional offices as well as at Headquarters in Washington, D.C.[34] We also had three new commissioners join the SEC during this past year, and we continue to face the challenge of a hiring freeze. The two biggest structural changes to the Division – creations of the Cyber Unit and the Retail Strategy Task Force – brought with them predictable challenges in transitioning caseloads and reallocating responsibilities.

Pointing out the challenges is not to make excuses, but to underscore how critical it is to be focused and vigilant about how we allocate our resources – it necessarily informs our decision making. It also underscores the significance of our successes in spite of these challenges. I believe the fact that we remained successfully on course despite those challenges is a testament to the dedication, professionalism and work ethic of the staff of the Enforcement Division.

But, with any challenge, we were also faced with opportunity. We have an incredibly dedicated team of professionals who have, in the face of resource constraints, actively and thoughtfully addressed broad issues and areas of the market that directly impact retail investors, without losing focus on the matters that are part of our historical mandate. And Steve and I feel extremely fortunate to be leading such a group.

Conclusion

So I end where I started. While statistics provide some information, they do not present a real, full picture of the nature or effectiveness of an enforcement program. Any assessment that suggests our effectiveness should be measured solely based on the number of cases we bring over any particular period of time is misguided. We are committed to *quality*: to have as broad an impact on the landscape we police as possible; to bring cases that send messages of general and specific deterrence; and to seek and obtain remedies tailored to the conduct at issue and the message we want to send. For every enforcement action brought by the Commission, the market should be able to understand why the Commission brought an enforcement action, understand the Commission's view of the conduct at issue, and understand why the Commission's action was in the interest of investors. I urge folks to read our next annual report – we will continue to be transparent about our program's metrics and, more importantly, we will continue to provide qualitative information about the effectiveness of the Enforcement Division.

Thank you for inviting me here to speak today. Enjoy the rest of the conference.

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[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues on the staff of the Commission.

[2] *See, e.g.*, Press Release 2018-198, *SeaWorld and Former CEO to Pay More Than $5 Million to Settle Fraud Charges; Company, Two Former Executives Charged With Misleading Investors About the Impact of Documentary on Business* (Sept. 18, 2018), available at https://www.sec.gov/news/press-release/2018-198 Press Release 2018-156, *SEC Files Charges in Municipal Bond "Flipping" and Kickback Schemes* (Aug. 14, 2018), available at https://www.sec.gov/news/press-release/2018-153 Press Release 2018-129, *Former CEO and CFO of ITT Barred and Ordered to Pay Penalties* (July 6, 2018), available at https://www.sec.gov/news/press-release/2018-129 Press Release 2018-81, *Hedge Fund Firm Charged for Asset Mismarking and Insider Trading; CFO Charged With Failing to Supervise Portfolio Managers* (May 8, 2018), available at https://www.sec.gov/news/press-release/2018-81 Press Release 2018-51, *SEC Charges Prominent Pastor, Financial Planner in Scheme to Defraud Elderly Investors* (Mar. 30, 2018), available at https://www.sec.gov/news/press-release/2018-51 Press Release 2018-10, *Alleged Perpetrator of Ski Slope Investment Scheme Agrees to Pay Back Investor Money, Surrender Properties* (Feb. 2, 2018), available at https://www.sec.gov/news/press-release/2018-10 Press Release 2018-6, *Six Accountants Charged with Using Leaked Confidential PCAOB Data in Quest to Improve Inspection Results for KPMG* (Jan. 22, 2018), available at https://www.sec.gov/news/press-release/2018-6; *see also, e.g.*, *infra* notes 3, 5, & 8-10 and accompanying text.

[3] Press Release 2018-199, *Biopharmaceutical Company, Executives Charged With Misleading Investors About Cancer Drug* (Sept. 18, 2018), available at https://www.sec.gov/news/press-release/2018-199.

[4] Press Release 2018-167, *Transamerica Entities to Pay $97 Million to Investors Relating to Errors in Quantitative Investment Models* (Aug. 27, 2018), available at https://www.sec.gov/news/press-release/2018-167.

[5] Press Release 2018-151, *SEC Charges U.S. Congressman and Others With Insider Trading* (Aug. 8, 2018), available at https://www.sec.gov/news/press-release/2018-151.

[6] Press Release 2018-108, *Merrill Lynch Admits to Misleading Customers about Trading Venues; Will Pay $42 Million Penalty to Settle Charges* (June 19, 2018), available at https://www.sec.gov/news/press-release/2018-108.

[7] Press Release 2018-71, *Altaba, Formerly Known as Yahoo!, Charged With Failing to Disclose Massive Cybersecurity Breach; Agrees To Pay $35 Million* (Apr. 24, 2018), available at https://www.sec.gov/news/press-release/2018-71.

[8] Press Release 2018-41, *Theranos, CEO Holmes, and Former President Balwani Charged With Massive Fraud; Holmes Stripped of Control of Company for Defrauding Investors* (Mar. 14, 2018), available at https://www.sec.gov/news/press-release/2018-41.

[9] Press Release 2017-235, *SEC Charges Operators of $1.2 Billion Ponzi Scheme Targeting Main Street Investors* (Dec. 21, 2017), available at https://www.sec.gov/news/press-release/2017-235 ("*Woodbridge*").

[10] Press Release 2017-196, *Rio Tinto, Former Top Executives Charged With Fraud; Worldwide Mining Company Alleged to Have Inflated Asset Values* (Oct. 17, 2017), available at https://www.sec.gov/news/press-release/2017-196.

[11] Jay Clayton, Chairman, U.S. Sec. & Exch. Comm'n, *Testimony on "Oversight of the U.S. Securities and Exchange Commission"* (June 21, 2018), available at https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission.

[12] U.S. Sec. & Exch. Comm'n, Div. of Enforcement, *Annual Report: A Look Back at Fiscal Year 2017* (Nov. 15, 2017), available at https://www.sec.gov/files/enforcement-annual-report-2017.pdf.

[13] CoinSchedule, *Q2 2018 – The State Of The ICO Market*, https://www.coinschedule.com/blog/wp-content/uploads/2018/08/q2-ico-report-1.pdf.

[14] Press Release 2017-131, *SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities; U.S. Securities Laws May Apply to Offers, Sales, and Trading of Interests in Virtual Organizations* (July 25, 2017), available at https://www.sec.gov/news/press-release/2017-131.

[15] U.S. Sec. & Exch. Comm'n, *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Release No. 81207 (July 25, 2017), available at https://www.sec.gov/litigation/investreport/34-81207.pdf.

[16] Press Release 2017-176, *SEC Announces Enforcement Initiatives to Combat Cyber-Based Threats and Protect Retail Investors* (Sept. 25, 2017), available at https://www.sec.gov/news/press-release/2017-176.

[17] *See* U.S. Sec. & Exch. Comm'n, *Cyber Enforcement Actions*, https://www.sec.gov/spotlight/cybersecurity-enforcement-actions (last visited Sept. 17, 2018) ("Cybersecurity Spotlight") (collecting cases).

[18] Press Release 2018-70, *SEC Charges Additional Defendants in Fraudulent ICO Scheme* (Apr. 20, 2018), available at https://www.sec.gov/news/press-release/2018-70; Press Release 2018-53, *SEC Halts Fraudulent Scheme Involving Unregistered ICO* (Apr. 2, 2018), available at https://www.sec.gov/news/press-release/2018-53.

[19] Press Release 2018-94, *SEC Obtains Emergency Order Halting Fraudulent Coin Offering Scheme; Charges "Blockchain Evangelist" Behind Alleged Scam* (May 29, 2018), available at https://www.sec.gov/news/press-release/2018-94 Press Release 2018-8, *SEC Halts Alleged Initial Coin Offering Scam* (Jan 30, 2018), available at https://www.sec.gov/news/press-release/2018-8.

[20] *See* Cybersecurity Spotlight, *supra* note 18 (collecting trading suspensions).

[21] U.S. Sec. & Exch. Comm'n, Div. of Enforcement & Off. of Compliance Inspections and Examinations, *SEC Statement Urging Caution Around Celebrity Backed ICOs* (Nov. 1, 2017), available at https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos.

[22] Press Release 2017-227, *Company Halts ICO After SEC Raises Registration Concerns* (Dec. 11, 2017), available at https://www.sec.gov/news/press-release/2017-227.

[23] *Id.*

[24] *See, e.g.*, Press Release 2018-126, *SEC Charges Attorney and Law Firm Business Manager With Illegal Sales of UBI Blockchain Internet Stock* (July 2, 2018), available at https://www.sec.gov/news/press-release/2018-126; Press Release 2018-61, *SEC Obtains Emergency Freeze of $27 Million in Stock Sales of Purported Cryptocurrency Company Longfin* (Apr. 6, 2018), available at https://www.sec.gov/news/press-release/2018-61.

[25] Press Release 2018-185, *SEC Charges ICO Superstore and Owners With Operating As Unregistered Broker-Dealers* (Sept. 11, 2018), available at https://www.sec.gov/news/press-release/2018-185.

[26] Press Release 2018-186, *SEC Charges Digital Asset Hedge Fund Manager With Misrepresentations and Registration Failures* (Sept. 11, 2018), available at https://www.sec.gov/news/press-release/2018-186.

[27] Stephanie Avakian, Dir., Div. of Enforcement, U.S. Sec. & Exch. Comm'n, *The SEC Enforcement Division's Initiatives Regarding Retail Investor Protection and Cybersecurity* (Oct. 26, 2017), available at https://www.sec.gov/news/speech/speech-avakian-2017-10-26.

[28] 12b-1 fees are fees paid by the fund out of fund assets to cover distribution expenses and sometimes shareholder service expenses. Distribution fees include fees paid for marketing and selling fund shares

[29] *See Capital Analysts, LLC*, Advisers Act Release No. 5009 (Sept. 14, 2018), available at https://www.sec.gov/litigation/admin/2018/ia-5009.pdf; *Harbour Investments, Inc.*, Advisers Act Release No. 5006 (Sept. 13, 2018), available at https://www.sec.gov/litigation/admin/2018/34-84115.pdf; *First Western Advisors*, Advisers Act Release No. 4995 (Aug. 24, 2018), available at https://www.sec.gov/litigation/admin/2018/34-83934.pdf; Press Release 2018-62, *SEC Orders Three Investment Advisers to Pay $12 Million to Harmed Clients* (Apr. 6, 2018), available at https://www.sec.gov/news/press-release/2018-62; *Packerland Brokerage Services, Inc.*, Advisers Act Release No. 4832 (Dec. 21, 2017), available at https://www.sec.gov/litigation/admin/2017/34-82383.pdf; Litigation Release No. 24007, *SEC Charges Advisory Firm and its Principal for Enriching Themselves at the Expense of Their Clients* (Dec. 11, 2017), available at https://www.sec.gov/litigation/litreleases/2017/lr24007.htm; Press Release 2017-165, *SunTrust Charged With Improperly Recommending Higher-Fee Mutual Funds* (Sept. 14, 2017), available at https://www.sec.gov/news/press-release/2017-165; *Envoy Advisory, Inc.*, Advisers Act Release No. 4764 (Sept. 8, 2017), available at https://www.sec.gov/litigation/admin/2017/ia-4764.pdf; *SEC Charges Advisory Firm With Violations Related to Mutual Fund Share Classes* (Aug. 1, 2017), available at https://www.sec.gov/litigation/admin/2017/34-81274-s.pdf; *SEC Charges Credit Suisse and Former IA Representative With Breaches of Fiduciary Duty* (Apr. 4, 2017), available at https://www.sec.gov/litigation/admin/2017/34-80373-s.pdf; *Alison, LLC*, Advisers Act Release No. 4673 (Mar. 29, 2017), available at https://www.sec.gov/litigation/admin/2017/34-80335.pdf; Press Release 2016-52, AIG Affiliates Charged With Mutual Fund Shares Conflicts (Mar. 14, 2016), available at https://www.sec.gov/news/pressrelease/2016-52.html; *Everhart Fin. Group, Inc.*, Advisers Act Release No. 4314 (Jan. 14, 2016), available at https://www.sec.gov/litigation/admin/2016/34-76897.pdf; Press Release 2015-283, *J.P. Morgan to Pay $267 Million for Disclosure Failures* (Dec. 18, 2015), available at https://www.sec.gov/news/pressrelease/2015-283.html; *Pekin Singer Strauss Asset Management Inc.*, Advisers Act Release No. 4126 (June 23, 2015), available at http://www.sec.gov/litigation/admin/2015/ia-4126.pdf; *Manarin Investment Counsel, Ltd.*, Advisers Act Release No. 3686 (Oct. 2, 2013), available at https://www.sec.gov/litigation/admin/2013/33-9462.pdf.

[30] *See* U.S. Sec. & Exch. Comm'n, Off. of Compliance Inspections and Examinations, *2018 National Exam Program Examination Priorities* (Feb. 7, 2018), available at https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2018.pdf; U.S. Sec. & Exch. Comm'n, Off. of Compliance Inspections and Examinations, National Exam Program, *Risk Alert: OCIE's 2016 Share Class Initiative* (July 13, 2016), available at https://www.sec.gov/files/ocie-risk-alert-2016-share-class-initiative.pdf.

[31] *See Capital Analysts, LLC*, Advisers Act Release No. 5009 (Sept. 14, 2018), available at https://www.sec.gov/litigation/admin/2018/ia-5009.pdf; *Harbour Investments, Inc.*, Advisers Act Release No. 5006 (Sept. 13, 2018), available at https://www.sec.gov/litigation/admin/2018/34-84115.pdf; *First Western Advisors*, Advisers Act Release No. 4995 (Aug. 24, 2018), available at https://www.sec.gov/litigation/admin/2018/34-83934.pdf; Press Release 2018-62, *SEC Orders Three Investment Advisers to Pay $12 Million to Harmed Clients* (Apr. 6, 2018), available at https://www.sec.gov/news/press-release/2018-62; *Packerland Brokerage Services, Inc.*, Advisers Act Release No. 4832 (Dec. 21, 2017), available at https://www.sec.gov/litigation/admin/2017/34-82383.pdf.

[32] Press Release 2018-15, *SEC Launches Share Class Selection Disclosure Initiative to Encourage Self-Reporting and the Prompt Return of Funds to Investors* (Feb. 12, 2018), available at https://www.sec.gov/news/press-release/2018-15.

[33] *Lucia v. SEC*, 585 U.S. ___ (2018), *Kokesh v. SEC*, 581 U.S. ___. 137 S. Ct. 1635 (2017).

[34] During fiscal year 2017, the heads of the SEC's New York, Chicago and Atlanta office, as well as the Division of Enforcement's Chief Accountant and an Associate Director in the Home Office, left the Commission. Press Release 2018-9, *Michael Maloney, Enforcement's Chief Accountant, to Leave SEC* (Jan. 30, 2018), available at https://www.sec.gov/news/press-release/2018-9; Press Release 2017-236, *Gerald Hodgkins, Associate Director of the SEC's Enforcement Division, to Leave the Agency After 20 Years of Service* (Dec. 21, 2017), available at https://www.sec.gov/news/press-release/2017-236; Press Release 2017-205, *David Glockner, Regional Director of Chicago Office, to Leave SEC* (Nov. 1, 2017), available at https://www.sec.gov/news/press-release/2017-205; Press Release 2017-191, *Walter Jospin, Regional Director of the SEC's Atlanta Office, to Leave the Agency* (Oct. 10, 2017), available at https://www.sec.gov/news/press-release/2017-191; Press Release 2017-179, *Andrew Calamari, Regional Director of the SEC's New York Office, to Leave the Agency After 17 Years of Service* (Sept. 28, 2017), available at https://www.sec.gov/news/press-release/2017-179. Additionally, Scott Friestad, an Associate Director in the Home Office, passed away in 2018. U.S. Sec. and Exch. Comm'n, *Statement on Passing of Enforcement Division Associate Director Scott W. Friestad* (Apr. 5, 2018), available at https://www.sec.gov/news/public-statement/statement-commission-040518.